

Message Text

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DRAFTED BY EB/ITP/EWT/MTLORIMER:TLW:DLB

APPROVED BY EB/ITP/EWT:MLORIMER

COMMERCE/OJCS:MGEORGE

TREASURY/OEWEP:SLYON

TREASURY/GC:BPALMER

L/EB:SBOND

EUR/EE:RCHRISTENSEN

EB/CSB/OSB:DBRAMANTE

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FM SECSTATE WASHDC

TO AMEMBASSY BUCHAREST

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E.O. 11652: N/A

TAGS: EEWT, RO

SUBJECT: LONG-TERM COOPERATION AGREEMENT

REF: BUCHAREST 6346

PLEASE CONVEY FOLLOWING TO GOR OFFICIALS:

1. WE CONSIDER ROMANIAN REVISED DRAFT A MAJOR STEP
FORWARD. IT PROVIDES AN AGREED BASIS FOR THE STRUCTURE
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OF AN AGREEMENT, AND ALSO REGISTERS CONCURRENCE OF OUR
TWO GOVERNMENTS ON THE WORDING OF MANY PROVISIONS. WE
APPRECIATE GOR'S RESPONSIVENESS, WHICH WE SHALL ENDEAVOR
TO RECIPROCATATE, IN INCORPORATING MANY PROVISIONS OF US

DRAFT.

2. SPECIFIC COMMENTS AND PROPOSALS FOLLOW:

PREAMBLE:

A) WE NOW APPEAR TO HAVE VIRTUALLY COMPLETE AGREEMENT ON TEXT OF PREAMBLE. WE SET FORTH AS FOLLOWS OUR PROPOSAL FOR ENGLISH-LANGUAGE TEXT, WHICH WE BELIEVE CONFORMS ENTIRELY ON ALL SUBSTANTIVE POINTS TO THAT IN ROMANIAN REVISED DRAFT:

"THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
"NOTING WITH SATISFACTION THE FAVORABLE DEVELOPMENT OF ECONOMIC RELATIONS BETWEEN THE TWO COUNTRIES,
"RESOLVED TO PROMOTE ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION BETWEEN THE TWO COUNTRIES ON THE BASIS OF THE PRINCIPLES OF INTERNATIONAL LAW, RESPECT FOR NATIONAL INDEPENDENCE AND SOVEREIGNTY, EQUALITY OF RIGHTS, NON-INTERFERENCE IN DOMESTIC AFFAIRS AND MUTUAL ADVANTAGE,
"TAKING INTO ACCOUNT THE RESPECTIVE LEVELS OF THE ECONOMIC DEVELOPMENT OF THE TWO COUNTRIES AND THE CHARACTERISTICS AND POTENTIAL OF THEIR ECONOMIES,
"DESIRING TO ENSURE CONTINUED EXPANSION AND DIVERSIFICATION OF ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION AND PROVISION OF INFORMATION TO FACILITATE SUCH COOPERATION,
"TAKING INTO CONSIDERATION THE PROVISIONS OF THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION BETWEEN THE SOCIALIST REPUBLIC OF ROMANIA AND THE UNITED STATES OF AMERICA OF DECEMBER 5, 1973 AND THE AGREEMENT ON TRADE RELATIONS BETWEEN THE SOCIALIST REPUBLIC OF ROMANIA AND THE UNITED STATES OF AMERICA OF APRIL 2, 1975,
"CONSIDERING THAT AGREEMENT ON GUIDELINES FOR THE DEVELOPMENT OF COOPERATION IS TO THEIR MUTUAL ADVANTAGE AND SERVES POSITIVELY THE INTERESTS OF THEIR PEOPLES,
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"HAVE AGREED AS FOLLOWS:"

B) WE SUGGEST FOR GOR'S CONSIDERATION POSSIBILITY OF ALSO INCLUDING REFERENCE TO CSCE IN PREAMBLE. WE MIGHT, FOR INSTANCE, INCLUDE JUST AFTER PARA ENDING "APRIL 2, 1975," AN ADDITIONAL PARA "HAVING IN MIND THE BENEFITS OF IMPLEMENTATION OF THE PROVISIONS OF THE FINAL ACT OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE,".

ARTICLE I

A) WE ARE PREPARED TO ACCEPT ROMANIAN TEXT FOR PARA 1,

WITH INSERTION OF "APPROPRIATE" BETWEEN "ALL" AND "STEPS".
QUALIFIER NECESSARY TO MAKE CLEAR THAT STEPS WOULD BE
CONSISTENT WITH GENERAL POLICIES OF THE TWO PARTIES.
SUGGEST THE WORD "THE" AFTER "FACILITATE" BE DELETED AND A
COMMA INSERTED AFTER "ORGANIZATIONS".

B) WE APPRECIATE INCLUSION OF TEXT OF PARA 2 AND WOULD
SUGGEST ONLY MINOR WORDING CHANGES, SO THAT PARA WOULD
READ AS FOLLOWS:

"THE PARTIES SHALL ENDEAVOUR TO ENSURE THAT FIRMS, COM-
PANIES AND ECONOMIC ORGANIZATIONS OF ONE COUNTRY, AND
THEIR REPRESENTATIVES RESIDING IN OR VISITING THE OTHER

COUNTRY FOR COMMERCIAL PURPOSES, WILL ENJOY SUITABLE OPER-
ATING CONDITIONS, INCLUDING ACCESS TO FACILITIES REQUIRED
FOR THE EXPEDITIOUS CONDUCT OF THEIR BUSINESS."

C) OUR PARA 3 WAS INTENDED TO STRESS COMMITMENT BY PARTIES
WITH REGARD TO TRADE RELATIONS RATHER THAN ECONOMIC,
INDUSTRIAL AND TECHNICAL COOPERATION IN GENERAL. NONETHE-
LESS, WE PREPARED TO ACCEPT GOR TEST, WITH ADDITION OF "AND
MULTILATERAL" AFTER "BILATERAL", IN ORDER TO INCLUDE A BRIEF
REFERENCE DIRECTED TOWARD CSCE AS WELL AS TOWARD GATT,
ECONOMIC COMMISSION FOR EUROPE, AND OTHER MULTILATERAL
ORGANIZATIONS.

D) PARA 4 WOULD HAVE TO BE DROPPED. WE ARE UNABLE TO
ACCEPT ANY COMMITMENT OUTSIDE FRAMEWORK OF TRADE AGREEMENT
TO EXTENSION OF MFN TARIFF TREATMENT. A GENERAL MFN COM-
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MITMENT REGARDING ECONOMIC, INDUSTRIAL, AND TECHNICAL CO-
OPERATING COULD ALSO BE INTERPRETED AS IMPLYING OBLIGATIONS
WITH REGARD TO STRATEGIC EXPORT CONTROLS THAT WE WOULD BE
UNABLE TO HONOR.

E) PARA 5 WOULD ALSO HAVE TO BE DROPPED. WE UNABLE TO
COMMIT OURSELVES TO EXTEND GENERALIZED PREFERENCES TO
ROMANIA FOR DURATION OF AGREEMENT. WHILE WE HAVE NO REASON
TO DOUBT THAT THIS WILL BE POSSIBLE, A FIRM COMMITMENT TO
DO SO WOULD BE INCONSISTENT WITH TITLE V OF THE TRADE ACT.
SIMILARLY, GENERAL COMMITMENT TO PROVIDE CONCESSIONAL CRED-
ITS AND OTHER ASSISTANCE TO ROMANIA COULD RAISE CONGRESSION-
AL COMPLICATIONS. IN GENERAL, OUR LAW PROHIBITS ASSISTANCE
TO ANY COMMUNIST COUNTRY UNLESS THE PRESIDENT FINDS AND
REPORTS TO CONGRESS THAT SUCH ASSISTANCE IS VITAL TO THE
SECURITY OF THE U.S. POLITICAL CONSIDERATIONS RENDER ADMIN-
ISTRATION INITIATIVES, OR CONGRESSIONAL SUPPORT, FOR AMEND-
MENT OF THIS LEGISLATION MOST UNLIKELY IN FORESEEABLE
FUTURE.

F) WE ALSO PROPOSE INCLUDING IN ARTICLE I PARAS 5,6 AND 7 OF ARTICLE II OF THE U.S. DRAFT. PARA 5, WHICH PROTECTS LEGALLY ACQUIRED RIGHTS AND INTERESTS, IS VIRTUALLY IDENTICAL TO ARTICLE V, PARA 3 OF THE US - FRG FCN TREATY. PARA 6 ELABORATES ON PARA 5 OF THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION OF DECEMBER 5, 1973 IT IS SIMILAR TO STANDARD PROVISIONS IN OUR TREATIES OF AMITY AND ECONOMIC RELATIONS AND OUR FCN TREATIES. WE PROPOSE REVISING PARA 7 OF THE U.S. DRAFT AS FOLLOWS:
"EACH PARTY AGREES TO FACILITATE TO THE MAXIMUM EXTENT POSSIBLE THE TRAVEL IN, TO, OR FROM ITS TERRITORY OF PERSONS ENGAGED IN BUSINESS ACTIVITIES CONSONANT WITH THE OBJECTIVES

OF THIS AGREEMENT." WE HOPE THIS WILL TAKE INTO ACCOUNT THE CONCERN REFLECTED IN ARTICLE III PARA 2 OF THE REVISED ROMANIAN DRAFT TO LIMIT THE APPLICABILITY OF A PROVISION OF THIS CHARACTER TO BUSINESSMEN ENGAGED IN ACTIVITIES THAT BOTH GOVERNMENTS WOULD CONSIDER APPROPRIATE.

ARTICLE II

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A) WE WOULD PREFER THAT THE LIST OF FIELDS CONTAINED IN PARA 1 OF ROMANIAN REVISED DRAFT INSTEAD BE PLACED IN AN ANNEX. IT WOULD BE APPROPRIATE FROM TIME TO TIME TO REVISE A LIST OF THIS NATURE. INSERTION OF THE LIST IN AN ANNEX, RATHER THAN IN THE BODY OF THE AGREEMENT, WOULD PERMIT US TO MAINTAIN GREATER FLEXIBILITY IN UNDERTAKING SUCH REVISIONS.

B) WE ARE PREPARED TO ACCEPT WORDING OF PARA 2 OF ROMANIAN DRAFT, WITH ADDITION THAT WOULD REFER TO PROVISIONS ALONG LINES OF ANNEX 1 OF U.S. DRAFT, WHICH, FOR REASONS SET OUT BELOW, WE BELIEVE IT WOULD BE USEFUL TO INCORPORATE. ACCORDINGLY, WE PROPOSE THAT, AFTER FIRST SENTENCE AS IN ROMANIAN DRAFT, REST OF PARA CONTINUE, "SUCH CONTRACTS WILL GENERALLY BE CONCLUDED ON TERMS CUSTOMARY IN INTERNATIONAL PRACTICE, AND MAY PROVIDE FOR SHARING AND TRANSFER OF BENEFITS, PARTICIPATION IN MANAGEMENT, AND PROCEDURES TO PROTECT THE RESOURCES COMMITTED BY EACH PARTNER IN COOPERATIVE ARRANGEMENTS, INCLUDING JOINT COMPANIES. PRINCIPLES GOVERNING THE ESTABLISHMENT AND OPERATION OF JOINT COMPANIES ARE SET FORTH IN ANNEX ... TO THIS AGREEMENT." (FYI EMBASSY SHOULD POINT OUT TO GOR THAT "BENEFITS" SHOULD BE CONSTRUED MORE BROADLY THAN "BENEFICII" OR "PROFITS".)

C) WE PROPOSE THAT TEXT OF PARA 3 BE REVISED AS FOLLOWS:

SUCH COOPERATION SHALL INCLUDE BUT NOT BE LIMITED TO:
-- COMMON PARTICIPATION IN CONSTRUCTION OF NEW INDUSTRIAL

FACILITIES AS WELL AS EXPANSION AND MODERNIZATION OF EXIST-
ING FACILITIES, IN BOTH COUNTRIES;
-- COMMON PARTICIPATION, INCLUDING FORMATION OF JOINT
VENTURES, OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS IN
THE TWO COUNTRIES IN PRODUCTION AND MARKETING OF GOODS AND
SERVICES;
-- PURCHASE, SALE AND LEASING OF MACHINERY AND EQUIPMENT;

-- PURCHASE AND SALE OF INDUSTRIAL AND AGRICULTURAL MATER-
IALS AND CONSUMER GOODS;
-- AS APPROPRIATE, THE PURCHASE, SALE AND LICENSE OF
PATENT RIGHTS AND TECHNOLOGICAL INFORMATION ON PRODUCTS,
DESIGNS AND PROCESSES;
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-- TRAINING AND EXCHANGE OF SPECIALISTS AND TECHNICIANS;
-- ESTABLISHMENT AND OPERATION OF OFFICES AND REPRESENTATIONS OF FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS IN THE TWO COUNTRIES;
-- PURCHASE AND SALE OF SERVICES, INCLUDING FULL AND EQUITABLE PARTICIPATION BY FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE TWO PARTIES IN BANKING; INSURANCE, INCLUDING MARINE AND AIR CARGO INSURANCE; AND OTHER FINANCIAL SERVICES;
-- SUCH OTHER COOPERATIVE ACTIVITIES AS MAY BE MUTUALLY AGREED BETWEEN PARTNERS IN THE TWO COUNTRIES."

IN VIEW OF OUR EXPORT CONTROL REGULATIONS, WE BELIEVE THE QUALIFICATION "AS APPROPRIATE" IS NECESSARY WITH REGARD TO TRANSACTIONS IN PATENTS, LICENSING, AND KNOW-HOW. WE THEREFORE PROPOSE TO DELETE THE SECTION BEGINNING "EXCHANGE OF KNOW-HOW" WITH THE EXCEPTION OF THE REFERENCE TO TRAINING AND EXCHANGE OF SPECIALISTS AND TECHNICIANS, WHICH, AS INDICATED ABOVE, WE WOULD INCLUDE AS A SEPARATE ITEM.

"EXCHANGE," AS OPPOSED TO "PURCHASE, SALE, AND LICENSE" OF TECHNOLOGY, WOULD NOT ORDINARILY BE "BASED ON CONTRACTUAL ARRANGEMENTS BETWEEN FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS." REFERENCE TO EXCHANGE IS THEREFORE INAPPROPRIATE FOR THIS ARTICLE.

D) FIRST SENTENCE OF PARA 4 COULD BE ACCEPTED IF REPHASED AS FOLLOWS: "THE TWO PARTIES SHALL, AS APPROPRIATE, FACILITATE COOPERATION BETWEEN FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO COUNTRIES IN THIRD MARKETS." REMAINDER OF PARA WOULD HAVE TO BE DROPPED. WE INTERPRET SECOND SENTENCE AS REFERENCE TO INCLUSION OF ROMANIA AS POSSIBLE SOURCE FOR U.S. FOREIGN AID PROCUREMENT. IF SUCH IS MEANING, IT IS INAPPROPRIATE TO 10-YEAR AGREEMENT, AS CONGRESS OCCASIONALLY REVISES STATUTES GOVERNING FOREIGN AID. WE HAVE NEVER SOUGHT TO INCLUDE PROVISION OF THIS CHARACTER IN AGREEMENTS WITH OTHER GOVERNMENTS. HOWEVER,

WE DO NOT WISH TO PRECLUDE POSSIBILITY OF PROCUREMENT FROM ROMANIAN SOURCES OF GOODS FINANCED BY USG CREDITS TO DEVELOPING COUNTRIES. ALTHOUGH PROCUREMENT IN ROMANIA IS NOW PROHIBITED BY 1961 PRESIDENTIAL DETERMINATION, WE IN-LIMITED OFFICIAL USE
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FORMED GOR AT RECENT JOINT COMMISSION MEETING THAT WE ARE WORKING TO REMOVE THIS RESTRICTION.

E) WE BELIEVE PARA 5 SHOULD BE ALTERED SOMEWHAT TO APPLY NOT ONLY TO BANKS AND BANK REPRESENTATIONS JOINTLY OWNED BY INSTITUTIONS OF THE TWO COUNTRIES BUT ALSO TO THOSE SUCH AS

MANUFACTURERS HANOVERTRUST'S FACILITY IN BUCHAREST, WHICH IS SOLELY U.S.-OWNED. MOREOVER, WE THINK IT WOULD BE ADVISABLE TO REFER NOT SIMPLY TO CREDITING AND DISCOUNTING ACTIVITIES BUT MORE GENERALLY TO BANKING SERVICES THAT SUCH INSTITUTIONS MAY PROVIDE. THEREFORE, WE SUGGEST ALTERNATIVE LANGUAGE ALONG THE FOLLOWING LINES:

"WITH A VIEW TO ENCOURAGING THE DEVELOPMENT OF BANKING SERVICES IN SUPPORT OF ECONOMIC, INDUSTRIAL, AND TECHNICAL COOPERATION, EACH PARTY SHALL FACILITATE, AS APPROPRIATE, THE ESTABLISHMENT AND OPERATION IN ITS TERRITORY OF BANKING INSTITUTIONS INVOLVING PARTICIPATION BY FIRMS, COMPANIES, OR ECONOMIC ORGANIZATIONS OF THE OTHER PARTY."

F) WE WOULD PREFER NOT TO INCLUDE A PROVISION ALONG THE LINES OF PARA 6. THIS PROVISION DUPLICATES A PART OF THE MORE EXTENSIVE AND DETAILED FINANCIAL PROVISIONS CONTAINED IN ARTICLE VI OF THE TRADE AGREEMENT. IF GOR FEELS A STRONG NEED FOR SUCH A PROVISION WE SUGGEST THAT WE MERELY USE THE FOLLOWING SENTENCE FROM ARTICLE VI OF THE TRADE AGREEMENT:

"ALL FINANCIAL TRANSACTIONS SHALL BE MADE IN UNITED STATES DOLLARS OR ANY OTHER FREELY CONVERTIBLE CURRENCY MUTUALLY AGREED UPON BY SUCH NATIONALS, FIRMS, COMPANIES AND ECONOMIC ORGANIZATIONS, UNLESS THEY OTHERWISE AGREE."

G) PARA 7 SEEMS TO US LARGELY TO DUPLICATE THE MEANING OF THE FIRST SENTENCE OF PARA 2, AND WE THEREFORE SUGGEST IT BE DROPPED.

H) WE REQUEST CONFIRMATION THAT THE FOLLOWING, WHICH IS ACCEPTABLE TO US, WOULD BE AN APPROPRIATE TRANSLATION OF THE ROMANIAN TEXT OF PARA 8:

"THE PARTIES AGREE THAT ACCELERATED NEGOTIATION OF PROPOSALS FOR COOPERATION BY THEIR FIRMS, COMPANIES, OR LIMITED OFFICIAL USE
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ECONOMIC ORGANIZATIONS HELPS TO LOWER COSTS, TO THE BENEFIT OF BOTH COUNTRIES, AND CREATES A FAVORABLE ATMOSPHERE FOR DISCUSSION OF NEW AREAS OF COOPERATION, PARTICULARLY FOR SMALL AND MEDIUM-SIZED FIRMS."

ARTICLE III

WE PROPOSE THAT THIS ARTICLE BE DROPPED.

A) PARA 1 APPEARS TO COVER MUCH THE SAME GROUND AS PARA 1 OF ARTICLE I, BUT WITH PARTICULAR EMPHASIS ON FACILITATION OF CONCLUSION OF CONTRACTS. WE WOULD PREFER TO AVOID LATTER EMPHASIS BECAUSE, FOR LONG-STANDING POLICY REASONS RELATED TO NATURE OF OUR ECONOMIC AND GOVERNMENTAL SYSTEM, U.S.G. GENERALLY REFRAINS FROM PARTICIPATION IN NEGOTIATION OR INTERPRETATION OF CONTRACTS BETWEEN AMERICAN FIRMS AND

AND FOREIGN ENTERPRISES.

B) AS MENTIONED EARLIER, WE AGREE THAT A PROVISION LIKE PARA 2 WOULD BE APPROPRIATE, AND HAVE SUGGESTED THAT IT BE INCLUDED IN ARTICLE I (SEE SUBPARA F UNDER DISCUSSION OF ARTICLE I).

C) PARA 3 IS UNACCEPTABLE. GRANTING FAVORABLE DUTY TREATMENT TO IMPORTS RELATED TO COOPERATION AGREEMENTS IS NOT CONSISTENT WITH THE INTERNATIONAL OBLIGATIONS OF BOTH THE US AND ROMANIA UNDER ARTICLE I, PARA 1 OF THE GATT. THE GATT SECRETARIAT, DURING WORKING PARTY ON ACCESSION OF HUNGARY, NOTED THAT "THE PREREQUISITE OF HAVING A COOPERATION CONTRACT IN ORDER TO BENEFIT FROM CERTAIN TARIFF TREATMENTS APPEARS TO IMPLY CONDITIONAL MOST-FAVORED-NATION TREATMENT AND WOULD, THEREFORE, NOT APPEAR TO BE COMPATIBLE WITH THE GENERAL AGREEMENT" (INT(72)66, 5 JULY 1972). WE ARE SURPRISED THAT A GATT MEMBER WOULD PUT FORWARD SUCH A PROPOSAL, TO WHICH WE CANNOT SUBSCRIBE.

D) AS MENTIONED EARLIER (SEE SUBPARA E UNDER DISCUSSION OF ARTICLE I) A GENERAL COMMITMENT TO PROVIDE PREFERENTIAL FINANCING AS CALLED FOR IN PARA 4 MUST BE RULED OUT.
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MOREOVER, U.S.G. FINANCING CAN BE EXTENDED ONLY ON THE BASIS OF THE MERITS OF EACH PROPOSAL. THE FACT THAT A PROPOSAL IS A FORM OF INDUSTRIAL OR TECHNICAL COOPERATION CAN NOT ENTITLE IT TO ASSURANCE OF MORE FAVORABLE TREATMENT. ACCORDINGLY, THIS PARA WOULD HAVE TO BE DROPPED.

ARTICLE IV

A) WE WOULD LIKE TO CONFIRM THAT FOLLOWING IS A SUBSTANT-

FULLY ACCURATE ENGLISH VERSION OF ARTICLE IV OF THE REVISED
ROMANIAN DRAFT:

"1. IN ORDER TO ASSIST FIRMS, COMPANIES, AND ECONOMIC
ORGANIZATIONS IN DETERMINING THE FIELDS AND PROJECTS MOST
LIKELY TO PROVIDE A BASIS FOR MUTUALLY BENEFICIAL CONTRACTS,
THE PARTIES, IN ACCORDANCE WITH THEIR LAWS AND REGULATIONS,
SHALL MAKE AVAILABLE UPON REQUEST BY NATIONALS, FIRMS,
COMPANIES, OR ECONOMIC ORGANIZATIONS OF THE OTHER PARTY, OR
BY THE OTHER PARTY ITSELF, ECONOMIC, COMMERCIAL, AND
STATISTICAL INFORMATION USEFUL FOR THE DEVELOPMENT OF
MARKET FORECASTS AND THE EXPANSION OF ECONOMIC, INDUSTRIAL,
AND TECHNICAL COOPERATION.

"2. SUCH INFORMATION SHALL INCLUDE:

A. STATISTICS CONCERNING PRODUCTION, NATIONAL INCOME,

WAGES AND EMPLOYMENT, CONSUMPTION AND PRODUCTIVITY;

B. FOREIGN TRADE STATISTICS AND INFORMATION ON LAWS,
REGULATIONS, AND ADMINISTRATIVE PROCEDURES AFFECTING FOREIGN
TRADE, TRANSFER OF TECHNOLOGY, AND THE OPERATION OF COOPER-
ATIVE VENTURES, INCLUDING LAWS, REGULATIONS, AND PROCEDURES
PERTAINING TO CURRENCY AND THE DETERMINATION OF EXCHANGE
RATES.

C. INFORMATION ON THE DEVELOPMENT AND EXPLOITATION OF
NATURAL RESOURCES;

D. PERIODIC DIRECTORIES, LISTS, AND ORGANIZATIONAL CHARTS
OF FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS CONCERNED
WITH FOREIGN TRADE, AS WELL AS OTHER INFORMATION HELPFUL
TO BUSINESS REPRESENTATIVES IN MAKING COMMERCIAL CONTACTS;
AND

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E. INFORMATION ON BANKING AND FINANCE.

"3. THE PARTIES SHALL EXCHANGE ON A REGULAR BASIS AGRICUL-
TURAL ECONOMIC INFORMATION, INCLUDING EXCHANGE OF INFORMAT-
ION ON STOCKS, FORWARD ESTIMATES ON SUPPLY AND DEMAND,
AND TRADE IN MAJOR AGRICULTURAL COMMODITIES, IN ACCORDANCE
WITH THE PROTOCOL ON DEVELOPMENT OF AGRICULTURAL TRADE OF
SEPTEMBER 11, 1975."

B) WE PROPOSE THAT TITLE OF ARTICLE BE CHANGED TO "ECONOMIC
INFORMATION." TEXT GIVEN ABOVE IS ACCEPTABLE WITH FOLLOW-
ING CHANGES:

-- IN PARA 1, PHRASE #AND, AS APPROPRIATE," ADDED AFTER
PHRASE "LAWS AND REGULATIONS";

-- OPENING OF PARA 2 REWORDED AS: #SUCH INFORMATION SHALL
INCLUDE, BUT NOT BE LIMITED TO:"

QUALIFIER "AS APPROPRIATE" NEEDED BECAUSE USG MAY BE UNABLE
TO ACQUIRE, OR MAKE AVAILABLE, INFORMATION HELD BY PRIVATE

COMPANIES.

ARTICLE V

A) RATHER THAN THE TITLE "ACTIVITY OF THE MIXED COMMISSION" WE WOULD PREFER "ROLE OF THE JOINT ECONOMIC COMMISSION." WE WISH TO AVOID ANY IMPLICATION THAT THIS ARTICLE IS INTENDED TO DEFINE ALL THE FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSION, AND TO MAKE CLEAR THAT INSTEAD IT IS INTENDED ONLY TO DESCRIBE THE RESPONSIBILITIES OF THE COMMISSION PURSUANT TO THIS AGREEMENT. MOREOVER, THE WORD "MIXED" IS INAPPROPRIATE BECAUSE THE COMMISSION, ON THE U.S. SIDE, DOES NOT INCLUDE NON-GOVERNMENTAL PARTICIPATION EXCEPT ON A VERY LIMITED, OCCASIONAL BASIS.

B) WE WOULD LIKE TO CONFIRM THAT THE FOLLOWING REPRESENTS AN ACCURATE ENGLISH RENDITION OF THE TEXT OF THIS ARTICLE

IN THE REVISED ROMANIAN DRAFT:

"1. THE AMERICAN-ROMANIAN MIXED COMMISSION, ESTABLISHED
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PURSUANT TO THE JOINT STATEMENT OF DECEMBER 5, 1973, SHALL MONITOR THE IMPLEMENTATION OF THIS AGREEMENT.

"2. THE RESPONSIBILITIES OF THE AMERICAN-ROMANIAN MIXED COMMISSION ARE AS FOLLOWS:

- A. TO EXAMINE THE DEVELOPMENT OF ECONOMIC, INDUSTRIAL, AND TECHNOLOGICAL COOPERATION BETWEEN THE TWO COUNTRIES;
- B. TO FACILITATE THE EXPANSION AND DIVERSIFICATION OF ECONOMIC, INDUSTRIAL, AND TECHNICAL COOPERATION BETWEEN THE TWO COUNTRIES ON THE BASIS OF MUTUAL BENEFITS, AND TO IDENTIFY NEW AREAS FOR SUCH COOPERATION;
- C. TO PROVIDE FOR REGULAR EXCHANGE OF VIEWS AND INFORMATION ON THE DEVELOPMENT OF ECONOMIC, INDUSTRIAL, AND TECHNICAL COOPERATION, AND ON RECIPROCAL EXTENSION OF BUSINESS FACILITIES;
- D. TO DISCUSS OTHER PROBLEMS RESULTING FROM THE IMPLEMENTATION OF THIS AGREEMENT.

"3. THE COMMISSION MAY ESTABLISH TEMPORARY WORKING GROUPS IN VARIOUS AREAS AS NECESSARY.

"4. THE COMMISSION MAY FACILITATE THE ESTABLISHMENT OF MIXED CONSULTATIVE GROUPS, CONSISTING OF REPRESENTATIVES OF FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO COUNTRIES, ON PROBLEMS OF PARTICULAR INTEREST."

C) WE ARE PREPARED TO ACCEPT THIS TEXT WITH THE FOLLOWING

CHANGES:

- CHANGE THE TITLE OF THE COMMISSION IN PARAS 1 AND 2 TO "JOINT U.S. - ROMANIAN ECONOMIC COMMISSION".
- INSERT AT THE BEGINNING OF THE FIRST SENTENCE OF PARA 2 THE PHRASE "IN THIS RESPECT".
- IN SUB-PARA 2D DELETE "PROBLEMS RESULTING FROM" AND SUBSTITUTE "MATTERS RELATED TO", WHICH CAN BE CONSTRUED MORE POSITIVELY TO APPLY NOT ONLY TO DIFFICULTIES THAT MAY ARISE BUT OPPORTUNITIES AS WELL.
- IN PARA 4 DELETE "MIXED" AND SUBSTITUTE "JOINT". THE CONSULTATIVE GROUPS REFERRED TO WOULD, ON THE U.S. SIDE, BE LIKELY TO CONSIST ENTIRELY OF PRIVATE BUSINESSMEN AND REPRESENTATIVES OF ASSOCIATIONS RATHER THAN GOVERNMENTAL LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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OFFICIALS.

- IN PARA 4 SUBSTITUTE "MATTERS" FOR "PROBLEMS".

ARTICLE V OF U.S. DRAFT:

A) WE WOULD PREFER TO RETAIN TEXT OF ARTICLE V OF U.S. DRAFT, WHICH STATES "NOTHING IN THIS AGREEMENT IS INTENDED TO DEROGATE FROM THE OBLIGATIONS OR RIGHTS OF THE PARTIES CONTAINED IN OTHER AGREEMENTS OR UNDERSTANDINGS BETWEEN THEM." WE BELIEVE IT SHOULD BE MADE CLEAR THAT PROVISIONS OF COOPERATION AGREEMENT SHOULD IN NO CASE BE CONSTRUED AS QUALIFYING UNDERTAKINGS CONTAINED IN OTHER BILATERAL AGREEMENTS. THIS IS PARTICULARLY IMPORTANT WITH RESPECT TO THE TRADE AGREEMENT, WHICH WAS APPROVED BY CONGRESS.

B) IF WE INCLUDE AN ARTICLE OF THIS CHARACTER, IT MIGHT ALSO CONTAIN THE FINAL PARAGRAPH OF ARTICLE VI OF ROMANIAN REVISED DRAFT, FOR WHICH WE PROPOSE FOLLOWING WORDING:

"TERMINATION OF THIS AGREEMENT SHALL NOT AFFECT CONTRACTUAL OBLIGATIONS ENTERED INTO BY NATIONALS, FIRMS, COMPANIES, AND ECONOMIC ORGANIZATIONS OF THE TWO COUNTRIES, OR BY EITHER PARTY."

ARTICLE VI OF ROMANIAN REVISED DRAFT:

A) WE NOTE THAT ROMANIAN DRAFT PROVIDES FOR APPROVAL WITHIN EACH GOVERNMENT AFTER AGREEMENT IS SIGNED, WITH ENTRY INTO FORCE UPON EXCHANGE OF APPROVAL NOTIFICATIONS. IN OUR CASE, SINCE CONGRESSIONAL APPROVAL WOULD NOT BE NECESSARY, THE APPROVAL PROCESS WITHIN THE EXECUTIVE BRANCH, WHICH INCLUDES APPROPRIATE CONSULTATIONS WITH CONGRESS, WOULD TAKE PLACE BEFORE SIGNATURE. WE WISH TO INQUIRE WHETHER A LIKE PROCEDURE WITHIN GOR IS POSSIBLE, SO THAT THE AGREEMENT COULD ENTER INTO FORCE ON THE DATE OF ITS SIGNATURE.

B) WE ARE PREPARED TO ACCEPT GOR PROPOSAL FOR ONE-YEAR
EXTENSIONS OF AGREEMENT. WE PROPOSE SLIGHT MODIFICATION
OF SECOND PARAGRAPH TO READ "THE AGREEMENT SHALL REMAIN IN
FORCE FOR TEN YEARS. THEREAFTER, IT SHALL BE AUTOMATICALLY
EXTENDED FOR SUCCESSIVE PERIODS OF 1 YEAR, PROVIDED THAT
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EITHER PARTY MAY TERMINATE IT AT THE END OF THE INITIAL
TEN-YEAR PERIOD OR ANY SUCCESSIVE ONE-YEAR PERIOD BY GIVING
SIX MONTHS' WRITTEN NOTICE TO THE OTHER PARTY."

ANNEX 1 OF U.S. DRAFT:

WE AGREE WITH GOR (PARA 2 REFTTEL) THAT WE SHOULD AVOID
DUPLICATION OF PROVISIONS OF OTHER AGREEMENTS. IN ANNEX 1
WE ARE TRYING TO WORK OUT A SET OF PROVISIONS NOT FOUND IN
OTHER BILATERAL ARRANGEMENTS THAT WOULD LEND SUPPORT FOR

JOINT COMPANIES IN TWO RESPECTS. FIRST, WE WISH TO SET
FORTH CLEARLY THE ENDORSEMENT OF BOTH GOVERNMENTS OF BASIC
PRINCIPLES THAT SHOULD GOVERN THE OPERATION OF JOINT COM-
PANIES IF THEY ARE TO OPERATE ON A SOUND LEGAL AND
COMMERCIAL BASIS.

WE THINK GOR WOULD ALSO FIND THIS USEFUL IN ATTRACTING
ADDITIONAL US INVESTMENT. SECOND, WE WISH TO ENSURE
THAT, WHERE APPLICABLE, JOINT COMPANIES HAVE RIGHTS,
ASSURANCES, AND FACILITIES AT LEAST EQUAL TO THOSE ACCORDED
BY THE TRADE AGREEMENT TO REPRESENTATIONS. WE WOULD
APPRECIATE HAVING THE VIEWS OF GOR OFFICIALS ON SPECIFIC
DIFFICULTIES THAT THE PROVISIONS OF ANNEX WOULD GIVE RISE
TO, AND ALTERNATIVE FORMULATIONS THAT MIGHT BE CONSIDERED.

3. WE ANTICIPATE THAT THE VIEWS COMMUNICATED HERE WILL
LEAD TO ADDITIONAL PROGRESS, AND WE SUGGEST THAT FOR THE
TIME BEING WE CONTINUE TO EXCHANGE VIEWS THROUGH EMBASSY
BUCHAREST. WE WILL ALSO KEEP GOR EMBASSY INFORMED OF OUR
VIEWS AND OF DEVELOPMENTS. PERHAPS LATER MORE FORMAL
NEGOTIATIONS MAY BECOME ADVISABLE, BUT FOR THE MOMENT
MOMENT NO DECISION APPEARS NECESSARY CONCERNING THEIR
TIMING AND VENUE. KISSINGER

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<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Disposition Authority: MorefiRH
Disposition Case Number: n/a
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Review Authority: MorefiRH
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